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REQUIREMENT UNDER THE TAFT HARTLEY ACT TO BARGAIN IN GOOD FAITH¹

A case which is two years old, *NLRB v. Wooster Division of Borg-Warner Corp.*,² is still the springboard into the discussion of bargainable issues under the Taft-Hartley Act requirement to bargain in good faith. The facts in *Borg-Warner* reveal that a certified international union submitted a proposed collective bargaining contract. Management made a counter-proposal, recognizing the local as sole bargaining agent and providing that a strike could not be called, or the contract terminated or modified, unless a majority of employees in the unit, including non-members, approved such action by secret ballot. A breakdown in negotiations occurred when the employers adamantly insisted on the proposals indicated. The union filed a charge with the National Labor Relations Board alleging a refusal to bargain. The United States Supreme Court held that an employer's insistence on inclusion in the contract of a strike ballot clause and a recognition clause, naming a local union rather than the international certified union as the bargaining party to the contract, was a violation of a statutory bargaining duty.³ The proposals were found not within the category specified by the Taft-Hartley Act for mandatory bargaining.⁴

The court laid down three categories of proposals and rules that apply to each: 1) Those that clearly would be illegal and forbidden under the law, such as proposals for a closed shop. Bargaining on such issues may not be required and they may not be included even if the other party agrees. 2) Those that may be placed on the bargaining table for voluntary bargaining and agreement. The other party may not be required to bargain on these issues and insistence on them as a condition to execution of a contract will be a violation of the bargaining duty. 3) Those that fall within scope of mandatory bargaining. The other party must bargain on such proposals and the party advancing them may insist on their inclusion in any executed contract.

A difficult and controversial problem is the determination of what is included in the last category. The court offered this test: A mandatory subject of bargaining must deal with the relations between the employer and employees, and not between the employees and their union.

¹ What constitutes good faith is beyond the scope of this comment. Emphasis is on subjects which are or are not bargainable.

² 356 U.S. 342 (1958).

³ 61 Stat. 140 (1947), as amended 29 U.S.C. §158 (a) (5) (1952) Labor Management Relations Act. "It shall be unfair labor practice for an employer to refuse to bargain collectively with the representatives of employees, subject to the provisions of section 9 (a)".

⁴ 61 Stat. 142 (1947), as amended 29 U.S.C. §158 (d) (1952). "For the purposes of this section to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment."

It relied on *NLRB v. Corsicana Cotton Mills*⁵ in which the Fifth Circuit held that a ratification clause, which was submitted by the company to the union, was an attempt to interfere with the internal affairs of the union. *NLRB v. Dalton Telephone Co.*⁶ was cited in support of the holding that good faith was immaterial if the subject was not within the area of mandatory bargaining.

The court followed *NLRB v. Brooks*⁷ and rejected *Allis-Chalmers Mfg. Co. v. NLRB*.⁸ In the former case the company refused to bargain with the union because of evidence that the union might not represent the majority. It was held that protecting the employees in this way is not an obligatory subject of collective bargaining. The latter case held that the strike vote and contract ratification clauses are within the provisions of the act.⁹ The court here based its decision on the reasoning that if employers can demand negotiation over employees' total relinquishment of their right to strike during the contract period, as decided in *NLRB v. Shell Oil Co.*,¹⁰ they can necessarily insist on bargaining over partial renunciation of the right. Expressly rejecting the theory that all matters of union "internal affairs" are beyond the scope of mandatory bargaining, the court pointed out that the strike vote and contract ratification were matters that affected all the employees in the unit, and therefore the union's argument that they involved only its internal affairs was not supportable.¹¹

The *Borg-Warner* decision distinguished the no-strike clause from the strike vote clause. It was noted that the no-strike clause involves the employees' right to strike and the exercise of this right is entrusted to the bargaining representative who has the power to waive it in a contract. The strike-ballot was explained as primarily concerned with the mechanics of testing a statutory representative's power to call a strike, or terminate or amend the contract during its term and only incidentally limiting the individual's right to strike. As such, it is a purely internal matter unrelated to any condition of employment. The Court felt that the strike-ballot was an attempt to by-pass the union in the process of bargaining and deal with the employees directly as individuals.

The four dissenters asserted that this was an illogical distinction. They maintained that there is really no difference since the "no-strike"

⁵ 178 F.2d 344 (5th Cir. 1949).

⁶ 187 F.2d 811 (5th Cir.), cert. denied, 342 U.S. 824 (1951).

⁷ 348 U.S. 96 (1954).

⁸ 213 F.2d 374 (7th Cir. 1954).

⁹ 61 Stat. 143 (1947), as amended 29 U.S.C. §159 (a) (1952) of the N.L.R.A. Representatives designated or selected for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. *Supra* notes 3 and 4.

¹⁰ 77 N.L.R.B. 1306 (1948).

¹¹ *Ibid.*

clause and the "strike vote" clause both affect the employee-employer relationship. In passing it was noted that the effect of a ballot clause is to determine the time of the strike. In addition to this the minority questioned the propriety of determining what subjects are mandatory. They emphasized good faith should be the sole test. They claimed that as long as the proposals are lawful, some should not be ruled as proper while others are not. In reaching this conclusion, they relied on *NLRB v. American National Insurance*.¹²

In *American National Insurance* the union submitted a clause providing for the arbitration of all grievances. Management, rejecting this provision, refused to agree to any contract which did not reserve to the employer, without recourse to arbitration, the sole control of hiring, firing, promotions, demotions and the determination of work schedules. The NLRB finding that the employer had committed the unfair labor practice of refusing to bargain collectively under Sections 8(a)(1) and (5) of the amended National Labor Relations Act, ordered the employer to cease insisting on unilateral control of conditions of employment as a prerequisite of any agreement. On certiorari to review the Fifth Circuit's refusal to enforce the NLRB order, the United States Supreme Court affirmed the circuit court's decision. It concluded that bargaining for unilateral control of conditions of employment was not, per se, a refusal to bargain collectively.¹³ The duty to bargain collectively is to be determined by the application of the good faith bargaining standards of the amended act¹⁴ to the facts of each case.

The general category of mandatory subjects for bargaining, as encompassed by the phrase "wages, hours, and other terms and conditions of employment," includes but is not limited to the following: Discharge of employees,¹⁵ seniority,¹⁶ working schedules,¹⁷ union security,¹⁸ check-off,¹⁹ piece rates or other incentive pay rates,²⁰ vacations,²¹ individual merit raises,²² transfer of present employees and other pertinent

¹² 343 U.S. 395 (1952), *affirming* 187 F.2d 307 (5th Cir. 1951).

¹³ See also *Timken Roller Bearing Co. v. NLRB*, 161 F.2d 949 (6th Cir. 1947), where the union contract included a clause giving management exclusive control over subcontracting of work. Typical management function clauses are collected in Teller, *Management Functions Under Collective Bargaining*, 96, 97 (1947).

¹⁴ *Supra* note 4.

¹⁵ *National Licorice Co. v. NLRB*, 309 U.S. 350 (1940).

¹⁶ *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949).

¹⁷ *Hallman & Boggs Truck Co. v. NLRB*, 95 N.L.R.B. 1443 (1951).

¹⁸ *NLRB v. Andrew-Jergens Co.*, 175 F.2d 130 (9th Cir. 1949). See also *Harcourt & Co.*, 98 N.L.R.B. 892 (1952).

¹⁹ *NLRB v. Reed & Prince Mfg. Co.*, 205 F. 2d 131 (1st Cir. 1953), *cert. denied*, 346 U.S. 887 (1953).

²⁰ *NLRB v. East Texas Steel Casting Co.*, 211 F.2d 813 (5th Cir. 1954).

²¹ *Phelps-Dodge Copper Products Corp. v. NLRB*, 101 NLRB 360 (1952).

²² *NLRB v. J. H. Allison Co.*, 70 N.L.R.B. 377 (1946), 165 F.2d 766 (6th Cir. 1948), *cert. denied*, 335 U.S. 814 (1948).

questions involved in the removal of a plant to a new location,²³ inclusion of so-called "side agreements" in the contract,²⁴ incorporation of existing practices into the contract,²⁵ plant rules establishing rest or lunch periods,²⁶ company owned houses used by employees,²⁷ bonuses at Christmas,²⁸ stock bonuses,²⁹ retirement plan,³⁰ group health and accident insurance programs,³¹ price of meals charged at lumber camp,³² and stock purchase plans for employees.³³

The category of voluntary subjects for permissible bargaining which are outside the statute because unrelated to wages, hours or working conditions include: The size and membership of employer or union bargaining teams;³⁴ the composition of employees' shop committee;³⁵ a requirement that a contract must be ratified by secret employee ballot;³⁶ a clause that a contract will become void whenever more than 50% of the employees fail to authorize the check-off;³⁷ an agreement that the union first organize the industry before the employer would bargain;³⁸ a requirement that a union post a performance bond;³⁹ a requirement that a union comply with certain non-mandatory state licensing requirements;⁴⁰ a proposal that the union confine its representation to member employees;⁴¹ a condition that non-members be

²³ *Brown Truck & Trailer Mfg. Co. v. NLRB*, 106 N.L.R.B. 999 (1953).

²⁴ *Ore. Coast Operators Assn. v. NLRB*, 113 N.L.R.B. 1338 (1955); *enfd* 246 F.2d 280 (9th Cir. 1957).

²⁵ *Natl. Carbon Div., Union Carbide Corp. v. NLRB*, 100 N.L.R.B. 689 (1952); amended without affecting the point, 105 N.L.R.B. 441 (1953).

²⁶ *Natl. Grinding Wheel Co. v. NLRB*, 75 N.L.R.B. 905 (1948).

²⁷ *NLRB v. Hart Cotton Mills*, 190 F.2d 964 (4th Cir. 1951) and *NLRB v. Lehigh Portland Cement Co.*, 205 F.2d 821 (4th Cir. 1953). However in *NLRB v. Bemis Bro. Bag Co.*, 206 F.2d 33 (5th Cir. 1953), the Fifth Circuit refused to enforce a NLRB order directing an employer to bargain with a union over rents charged employees for co-owned houses. The Court said it found no evidence that the rents were lower than those charged elsewhere in the area. It added that employees weren't required to use the company houses.

²⁸ *NLRB v. Niles-Bement-Pound Co.*, 97 N.L.R.B. 165 (1951); *enfd* 199 F.2d 713 (2d Cir. 1952).

²⁹ *United Shoe Machinery Corp.*, 96 N.L.R.B. 1309 (1951).

³⁰ *Tide Water Oil Co.*, 85 N.L.R.B. 1096 (1949).

³¹ *W. W. Cross & Co. Inc. v. NLRB*, 77 N.L.R.B. 1162 (1948); *enfd* 174 F.2d 875 (1st Cir. 1949).

³² *Weyerhaeuser Timber Co. v. NLRB*, 87 N.L.R.B. 672 (1949).

³³ *Richfield Oil Co. v. NLRB*, 110 N.L.R.B. 356 (1954); *enfd* 231 F.2d 717 (C.A.D.C. 1956); *cert. denied* 351 U.S. 909 (1956).

³⁴ *Am. Newspaper Publishers Assn. v. NLRB*, 193 F.2d 782 (7th Cir. 1951); *affirmed* 345 U.S. 100 (1953). *N.L.R.B. v. Deena Aartware*, 198 F.2d 645 (6th Cir. 1952); *cert. denied* 345 U.S. 906 (1953).

³⁵ *Iron Castings Inc. v. NLRB*, 114 N.L.R.B. 739 (1955).

³⁶ *NLRB v. Darlington Veneer Co.*, 113 N.L.R.B. 1101 (1955); *enfd* 236 F.2d 85 (4th Cir. 1956).

³⁷ *Ibid.*

³⁸ *NLRB v. Geo. Pilling & Son*, 119 F.2d 32 (3rd Cir. 1941).

³⁹ *Taormina Co. v. NLRB*, 94 N.L.R.B. 884 (1951); *enfd* 207 F.2d 251 (5th Cir. 1953).

⁴⁰ *Supra*, note 6.

⁴¹ *Mcquay-Norris Mfg. Co. v. NLRB*, 116 F.2d 748 (7th Cir. 1940); *cert. denied* 313 U.S. 565 (1941).

given the right to vote at union meetings;⁴² an understanding that bargaining be conditioned on termination of a current strike,⁴³ and a demand that the contract be countersigned by at least one employee.⁴⁴

The employer takes a risk whenever he insists on some proposal to a point of impasse. It is crucial that it be a mandatory subject and it is incumbent upon him to know that it falls in this category. There is no clear guide to compulsory bargaining. Statutory provisions are indefinite and do not state explicitly what subjects are included.⁴⁵ Congress gave the statute flexibility, which enables it to meet the increasing problems arising from the employer-employee relationship. The United States Supreme Court has stated the statutory collective bargaining duty includes bargaining "about the exceptional as well as routine matters affecting wages, hours, and other conditions of employment."⁴⁶

Since there is a failure to define terms it has been left to the case decisions to give meaning to these sections.⁴⁷ Tough cases often grew out of management claims of an inherent right to run its business. In *Singer Mfg. Co. v. NLRB*,⁴⁸ the Board rejected the employer's contention that holidays, vacations and bonuses were matters that could be withdrawn from bargaining where the company desired to grant such benefits as a gratuity. The Board ordered management to bargain with the union as the representative of its employees. In *NLRB v. Reed and Prince Mfg. Co.*,⁴⁹ the Court of Appeals held a clause, requiring agreement that the union would not request or demand either a closed shop agreement or the check-off system, was against public policy in that it forestalled future collective bargaining upon matters which were frequent subjects of negotiation between employers and employees. In *NLRB v. Montgomery Ward & Co.*,⁵⁰ the union requested the inclusion of a provision prohibiting discrimination based upon union affiliation. The employer refused to agree to the union's proposal. The decision held that such refusal demonstrated bad faith, stating that "clauses prohibiting discrimination because of union affiliation are frequently sought by labor organizations to give the employees a 'feeling of security' in the exercise of rights guaranteed in the act and such clauses are not uncommonly embodied in collective

⁴² *Supra* note 5.

⁴³ *NLRB v. Pecher Lozenge Co.*, 209 F.2d 393 (2d Cir. 1953), *cert. denied* 347 U.S. 953 (1954).

⁴⁴ *Stylecraft Furniture Co. v. NLRB*, 111 N.L.R.B. 930 (1955).

⁴⁵ *Supra* note 3.

⁴⁶ *Railroad Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 347 (1944).

⁴⁷ *Supra* notes 2, 3, and 9.

⁴⁸ 24 N.L.R.B. 444 (1940); *enforced* 119 F.2d 131 (7th Cir. 1941); *cert. denied* 313 U.S. 595 (1940).

⁴⁹ *Supra* note 19.

⁵⁰ 37 N.L.R.B. 100 (1941); *enforced* 133 F.2d 676 (9th Cir. 1943).

bargaining contracts.”⁵¹ The Board found that a refusal of the employer to agree to the requested provision was a “refusal to do what reasonable and fairminded men are ordinarily willing to do and therefore a refusal to bargain.”⁵² In *NLRB v. Boss Mfg. Co.*,⁵³ the union made proposals relating to Sunday, holiday and overtime work. The employer refused to embody any of them in an agreement on the grounds they were already covered by Federal Law. The Court referred to the matters as “essential principles” and ordered further bargaining. In *NLRB v. J. H. Allison & Co.*,⁵⁴ an employer refused to bargain on merit wage increases because the employer said such “are not bargainable issues” since they are “an exclusively managerial function.” The Board stated “we are of the opinion that merit increases are an integral part of the wage structure, and as such, constitute a proper subject of collective bargaining.”⁵⁵ *W. W. Cross and Co. v. NLRB*⁵⁶ considered health and accident and insurance plans as matters for negotiation. The management contended that the language of the statute should be limited to matters historically the subjects of collective bargaining. This position was rejected by the court on the theory that Congress did not intend to restrict bargaining to those issues common in 1935. “On the contrary,” the court said, “we think Congress intended to impose on employers a duty to bargain collectively with employees’ representative with respect to any matter which might in the future emerge as a bone of contention between them provided, of course, it should be a matter ‘in respect to rates of pay, wages, hours of employment, or other conditions of employment.’”⁵⁷ In *The American National Insurance Case*,⁵⁸ the company insisted on unilateral control of conditions of employment as a condition to an agreement. The court decided a common collective bargaining practice “is an issue for determination across the bargaining table.”⁵⁹

As to subjects not yet determined the decisions point the way to future determinations, but not too clearly. To predict bargainability one must resort to past standards and criterions to determine if the subject is covered. *Inland Steel v. NLRB*⁶⁰ held that “wages” include all emoluments of value which may accrue out of the employment relationship and defined “conditions of employment” as meaning those terms under which employment is granted or taken away. The latter

⁵¹ *Id.* at 121.

⁵² *Ibid.*

⁵³ 118 F.2d 187 (7th Cir. 1941).

⁵⁴ *Supra* note 22.

⁵⁵ 70 N.L.R.B. 377, 378.

⁵⁶ *Supra* note 31.

⁵⁷ *Id.* at 878.

⁵⁸ *Supra* note 12.

⁵⁹ *Id.* at 409.

⁶⁰ *Supra* note 16.

definition has not resulted in a fixed and certain interpretation. However, the wage definition has been considered broad enough to make the entire area of fringe benefits mandatorily bargainable.⁶¹ The *Singer Mfg.*⁶² decision declared that the determination of mandatory subjects depended on a twofold test: "an integral part of the earnings and working conditions of the employees" and "matters which are generally the subjects of collective bargaining."⁶³ The court in a later ruling proclaimed "frequent subjects of negotiation between employers and employees" as a test.⁶⁴ Still another test was added in the *Montgomery-Ward & Co.*⁶⁵ determination. It permitted clauses introduced to give employees a "feeling of security" which are not uncommonly embodied in collective bargaining contracts. This reasoning has since been rejected.⁶⁶ A test of this nature has practically no limitations, since many clauses are sought by the union to give employees a "feeling of security." The "essential principles" criterion used in *NLRB v. Boss Mfg. Co.*⁶⁷ has also failed to provide a predictable standard by which parties may know their ultimate legal position in a controversy.

*W. W. Cross and Co.*⁶⁸ appears to abandon past criterions for determining the subjects for bargaining. Under the standard devised in this case a party can no longer claim that because the other parties have not bargained, the issue is not mandatory.

A later and more extreme case in this area is *American National Insurance v. NLRB*⁶⁹ which followed the *Singer Mfg.*⁷⁰ conclusion. The decision seems to embrace within the scope of bargaining, functions and claimed rights of management whether within the language of section 9(A) or not. The result could be the addition of elements of management function to the bargaining agenda.

Though the court has accepted a subject as one which falls in the mandatory category, a party may be found guilty of a refusal to bargain because of lack of good faith. Thus the same result is arrived at as though it had been found to be non-mandatory. In *Majure v. NLRB*,⁷¹ the company showed no willingness to alter the position by which it reserved the right of unilateral action as to wages, hours, and working conditions. The board found bad faith. The tendency of the board and

⁶¹ *Supra* notes 28, 29, 30, 31, 32, 33.

⁶² *Supra* note 48.

⁶³ *Supra* note 31, at 878.

⁶⁴ *Supra* note 19.

⁶⁵ *Supra* note 50.

⁶⁶ *NLRB v. I.B.S. Mfg. Co.*, 210 F.2d 634 (5th Cir. 1954).

⁶⁷ *Supra* note 53.

⁶⁸ *Supra* note 31.

⁶⁹ *Supra* note 12.

⁷⁰ *Supra* note 48.

⁷¹ 198 F.2d 735 (5th Cir. 1952).

court has been to find bad faith per se from insistence on these rights even though the act doesn't compel agreement.⁷²

It may be questioned whether the Court in *Borg-Warner* made a valid distinction when it differentiated between the "no-strike clause" and the "strike ballot clause." It is a recognized principle that an employer's insistence on the inclusion of a no-strike clause in any contract which may be executed, is not a refusal to bargain where it appears that the bargaining was otherwise in good faith.⁷³ In *Borg-Warner*, the Court declared the two clauses required the application of different rules of law. Basically their effect is as follows: In agreements where there is a no-strike clause, the union agrees not to strike and the company agrees not to lock out during the term of the collective labor agreement; in the strike vote clause situation the representatives of the union surrender the right to strike after the contract has been executed. Theoretically, there is a right of employees to strike with certain limitations and this right may be waived. Practically, in both of these cases there is a waiver of this right under different conditions, but not sufficiently different to change the rule of law.⁷⁴ It has been pointed out that when the Seventh Circuit said there was a difference without substance, it was never mentioned that in one both were bound by contract, but in the other, there is no contract in effect and the company is not bound.⁷⁵ However, it is submitted that the distinction between the "no-strike clause" and the "strike ballot clause" is unrealistic. Certainly both affect the employer-employee relationship and should be placed in the same category of subjects affecting conditions of employment upon which bargaining is required and upon which there may be insistence to point of impasse.

Since there is no all inclusive clear guide to compulsory bargaining, many feel that the Board and courts should be left free to judge each case individually and vary the rule with the needs of the company, industry and economy.⁷⁶ Two reactions to the uncertainty of such undefined limits are: 1) The board should draw a specific list of bargainable issues so that there is no flexibility.⁷⁷ 2) Boards and courts shouldn't judge whether an issue is bargainable according to wages, hours and other conditions of employment, but the employer should be required to bargain on subjects that have become bargainable by custom and

⁷² *Supra* note 4; *NLRB v. Jones & Laughlin*, 301 U.S. 1 (1937); *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949).

⁷³ *Burns Brick Co.*, 80 N.L.R.B. 389 (1948).

⁷⁴ *Supra* note 8.

⁷⁵ 43 Geo. L. J. 309 (1955).

⁷⁶ *Proper Subjects for Collective Bargaining, Ad. Hoc. v. Predictive Definition*, 58 Yale L. J. 803 (1949).

⁷⁷ *The Duty to Bargain: Bargainable Issues*. 50 Nw. U. L. Rev. 279.

tradition in order to show that he was bargaining in good faith as required by the act.⁷⁸

Those favoring the latter view⁷⁹ contend the act did not contemplate defining the scope of collective bargaining, but its function was to write the principle of majority rule into the new statutes.⁸⁰ Along these lines it has been decided that the purpose of the act is to encourage the voluntary settlement of labor-management disputes through private negotiation,⁸¹ but that the act doesn't attempt to prescribe the substantive terms which such an agreement must contain.⁸² The National Labor Relations Act has been said to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States.⁸³ Senator Walsh, speaking of the Wagner Act, stated:

When the employees have chosen their organization, when they have selected their representatives, all the bill proposes to do is to escort them to the door of the employer and say 'here they are, the legal representatives of your employees.' What happens behind those doors is not inquired into and the bill does not seek to inquire into it.⁸⁴

There are those, however, who say Congress clearly intended to establish more than a simple procedure and thus require parties to talk about something. Since the effectiveness of this mandate would be greatly reduced if no one were authorized to define the subject matter of bargaining, the courts seem justified in assuming the duty they have undertaken.⁸⁵ Most important in this case, is the court's approval of the NLRB's power to decide what may be insisted to the point of impasse and what may not. Until recently the exact issue in these cases has rarely been whether or not a subject was properly bargainable, but rather whether the employer had bargained in good faith.⁸⁶

It is submitted that the better reasoning is to be found in the view which maintains that insistence upon proposals, which do not comprise compulsory bargaining topics, is not in itself an unfair labor practice.⁸⁷ Although the act requires that one must bargain, it cannot be inferred that either party has an enforceable right not to bargain with respect

⁷⁸ *Supra* note 3.

⁷⁹ Cox & Dunlop, *Regulations of Collective Bargaining by the N.L.R.B.*, 63 Harv. L. Rev. 389, 395 (1950).

⁸⁰ *Id.* at 396.

⁸¹ *Edison Co. v. NLRB*, 305 U.S. 197, 236 (1938).

⁸² *Terminal R. Assn. v. Brotherhood of R. Trainmen*, 318 U.S. 1, 6 (1943).

⁸³ *Supra* note 46.

⁸⁴ 79 Cong. Reg. 7660 (1935).

⁸⁵ *Scope of Required Collective Bargaining under L.M.R.A.*, 50 (Colum. L. Rev. 351 (1950)).

⁸⁶ *Ibid.*

⁸⁷ 56 Colum. Law Rev. 623 (1956).

to matters outside the statutes. This result is contrary to the underlying policy of the act which seeks generally to have the parties, rather than the Board, determine the substantive nature of their agreements.⁸⁸ The statute merely seeks to set forth the area in which collective bargaining is legally required, but should not be interpreted as precluding parties from exercising their economic power to force bargaining on all matters outside that area.⁸⁹ Since concessions are not required, it would seem that the scope of mandatory subjects should be relatively unlimited.⁹⁰

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LL.B., June, 1959

⁸⁸ *Supra* note 12 at 401-402, 408-409; Cox & Dunlop, *Regulation of Collective Bargaining by the N.R.L.B.*, *Supra* note 73; cf. Findling and Colty, *Regulation of Collective Bargaining by the N.L.R.B.*, 51 Colum. L. Rev. 170 (1951).

⁸⁹ *Supra* note 87 at 624.

⁹⁰ The Taft-Hartley removed from the area of Collective Bargaining: Close Shop Agreement and under certain circumstances Union Shop and maintenance of membership contracts §§8a(3) 8(b) (2) and 9(e); checkoff of union dues, except where authorized by individual employees §§302 (a), 302 (c) (4) and certain types of feather bedding agreements §§8(b) (6) also the Statute itself regulates employer contributions to union Welfare funds §§302 (a), 302 (c) (5).